

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

Application 30119B Permit 20821B License _____

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,
ADDING ENDANGERED OR THREATENED SPECIES TERM,
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 20831B was issued to Twiggy Lam on December 10, 1997, pursuant to Application 30119B.
2. A petition for an extension of time in which to develop the project and apply the water to the proposed use was has been filed with the State Water Resources Control Board on December 4, 1998.
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.
4. Fish, wildlife, and plants species have been or may be listed under the federal Endangered Species Act and/or the California Species Act.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A new development schedule is approved as follows:

Complete application of the water to the proposed use shall be made by
December 31, 2004.

(0000009)

2. The addition of paragraph 23 to the permit to read as follows:

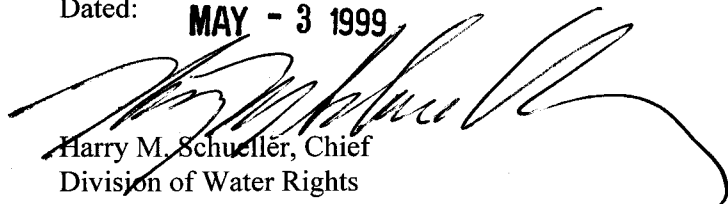
This permit does not authorize any act, which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee

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shall obtain an incidental take permit prior to construction or operation.
Permittee shall be responsible for meeting all requirements of the applicable
Endangered Species Act for the project authorized under this permit.

(0000014)

Dated: **MAY - 3 1999**



Harry M. Schueller, Chief
Division of Water Rights

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20821B

Application 30119B of Twiggy Lam

Flat 29, Block 33A, The South Horizon Aberdeen, Hong Kong

filed on April 28, 1992, has been approved by the State Water Resources Control Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

(1) Unnamed Stream

(7) Hardin Creek

Tributary to:

Hardin Creek Thence

Maxwell Creek thence

Pope Creek thence

Lake Berryessa thence

Putah Creek

Maxwell Creek thence

Pope Creek thence

Lake Berryessa thence

Putah Creek

2. Location of point of diversion:	40-acre subdivision of public land survey	Proj. Sect.	Township	Range	Base and Meridian
Storage and Rediversion					
(1)Reservoir #1 - California Coordinage System: Zone 2, N 336,500 and E 1,897,200	SE¼ of NE¼	36	9N	5W	MDB&M
Diversion to Offstream Storage					
(7)California Coordinate System: Zone 2, N 336,850 & E 1,898,700	SW¼ of NW¼	31	9N	4W	MDDB&M
Offstream Storage					
(1)Reservoir #1	SE¼ of NE¼	36	9N	5W	MDB&M

County of Napa

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Stockwatering						
Recreational	Reservoir #1 within E½	36	9N	5W	MDB&M	
Domestic						
Frost Protection						
Heat Control						
Irrigation	E½	36	9N	5W	MDB&M	40
					TOTAL	40

The place of use is shown on map dated November 7, 1997, on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 49 acre-feet per annum to be collected from November 1 of each year to May 31 of the succeeding year as follows: 49 acre-feet per annum in Reservoir #1. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

The maximum rate of diversion to offstream storage under this permit together with that diverted under Permit 20821A shall not exceed 10 cubic feet per second. (000005J0)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Construction work shall be prosecuted with reasonable diligence and shall be completed by December 31, 1998. (0000008)

8. Complete application of the water to the authorized use shall be made by December 31, 1999. (0000009)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

11. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust. (0000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

13. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

14. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam for Reservoir #1, as near as practicable to the bottom of the natural stream channel in order that water entering the reservoirs which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Right for approval. Before storing water in the reservoirs, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

15. Permittee shall install and properly maintain a totalizing flow meter and/or other measuring device satisfactory to the State Water Resources Control Board at Point of Diversion 7 so that water diverted to offstream storage may be accurately determined. Permittee shall record measuring device readings on a monthly schedule and submit records to the State Water Resources Control Board annually.

16. For the protection of fish and wildlife, diversions from Hardin Creek at Point of Diversion 7 shall be subject to maintenance of the following minimum bypass flows:

- (a) from November 1 through November 30, a minimum of 1 cubic feet per second
- (b) from December 1 through February 29, a minimum of 10 cubic feet per second
- (c) from March 1 through May 31, a minimum of 2 cubic feet per second

No diversion from Hardin Creek is allowed under this permit if the total streamflow is or would be reduced below the designated amounts. (0140060)

17. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

- 2) Division of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- 3a) Within one year of the construction of the reservoir covered by this permit, permittee shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of this survey and the area-capacity curve shall be provided to the watermaster and the SWRCB.
- 3b) Permittee shall install and maintain a device, satisfactory to the SWRCB, capable of measuring water diverted to storage under this permit. Satisfactory devices shall include: For Pumping Stations:
(1) In-line flow meter having instantaneous and total flow reading capability, or (2) Proof of a pump test preformed within the last five years together with official monthly power consumption records for electric meter serving the pump. For Gravity Diversions:
A weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements.
- 4a) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the SWRCB for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified by the watermaster with written notice to the permittee.
- 4b) Permittee shall maintain monthly records of diversion to offstream storage from October 1 of each year April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.
- 5) Permittee shall report to the watermaster annually, all divisions under this permit by September 1 of each year on forms approved by the watermaster.
- 6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.
- 7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.

Inclusion in the permit of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit. (0000024)

The SWRCB shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the march 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms and conditions consistent with any order of The Superior Court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing. (0000012)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: DECEMBER 10 1997

STATE WATER RESOURCES CONTROL BOARD

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Chief, Division of Water Rights